

This letter discusses the documentation requirements for sales for resale and for the manufacturing machinery and equipment, production agriculture, and graphic arts exemptions. See 86 Ill. Adm. Code 130.1405 and 86 Ill. Adm. Code Sections 130.330, 130.305, and 130.325. (This is a GIL.)

August 22, 2006

Dear Xxxxx:

This letter is in response to your letter dated June 8, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The company I work for (ABC Company) leases two types of assets, internal and external. ABC Company has exemption certificates on file from customers who have claimed exemption from sales tax. These certificates have been made out to ABC Company as seller, (Lessor).

Soon ABC Company will be sold to an unrelated purchaser. Prior to the sale of ABC Company the internal assets will be transferred to a newly created Single Member Limited Liability Company, (SMLLC).

My question is, do we have to obtain new certificates (many thousands) made out to the SMLLC or can we rely on the certificates made out to ABC Company? Obviously on a going forward basis all new certificates will be made out to the SMLLC.

Thank you.

DEPARTMENT'S RESPONSE

You did not mention what kind of exemption ABC Company's customers are claiming; however we hope that the following information is helpful.

Leases: The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. There are no "exemptions" for lessees.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

Sales for Resale: Except in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) the seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certificate of Resale to Out-of-State purchaser:
 - a) purchaser's registration number with the Illinois Department of Revenue; or
 - b) purchaser's resale number issued by the Department of Revenue; or
 - c) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

While there is no statutory requirement that blanket Certificates of Resale be renewed at certain intervals, blanket Certificates should be updated periodically, and no less frequently than every three years.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale (Section 2c of the Act). For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois.

Equipment exemptions: Exemption certificates are also required for purchasers claiming exemptions for equipment that will be used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease, primarily in production agriculture, or primarily in graphic arts production. (See 86 Ill. Adm. Code Sections 130.330, 130.305, and 130.325.) The Department's form ST-587 "Equipment Exemption Certificate" (available on the Department's website) is used for this purpose.

As you can see, it is necessary that the buyer and the seller be properly identified for the purpose of claiming the above mentioned exemptions. It is therefore our opinion that ABC Company should request new exemption certificates rather than rely upon certificates issued to a different retailer.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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